

REGISTRATION NUMBER

PURCHASING AUTHORITY NUMBER
(if applicable)
EDD-7100

AGREEMENT NUMBER
M53530

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Employment Development Department

CONTRACTOR NAME

Deloitte Consulting LLP

2. The term of this Agreement is: Start Date:
End Date:

3. The maximum amount of this Agreement is: \$ 11134665

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

EXH	TITLE	PAGES
A	Statement of Work	11
B	Budget Detail and Payment Provisions	3
C	*General Provisions (Information Technology) GSPD 401IT Rev Date:	28
D	EDD Special Terms and Conditions to Safeguard Federal Tax Information	9
E	Security and Data Protection	1
F	FEMA - Contract Provisions Template	6

Items shown with an asterisk (*) are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Model-Contract-Language>

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

Department of Technology,
Statewide Technology Procurement
Use Only

CONTRACTOR NAME (If other than an individual, state whether a corporation, partnership, etc.)

Deloitte Consulting LLP

CONTRACTOR AUTHORIZED SIGNATURE


Josh Nisbet (Apr 19, 2020)

DATE SIGNED

04/19/20

PRINTED NAME AND TITLE OF PERSON SIGNING

Josh Nisbet, Director US Government Markets

ADDRESS

980-9th Street, Suite 1800 Sacramento, CA 95814

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Employment Development Department

CONTRACTING AGENCY AUTHORIZED SIGNATURE


Sandy Mendes (Apr 19, 2020)

DATE SIGNED

Apr 19, 2020

PRINTED NAME AND TITLE OF PERSON SIGNING

Sandy Mendes, Chief Business Operations Planning & Support Div

CONTRACTING AGENCY ADDRESS

800 Capitol Mall, Sacramento, CA 95814

California Department of Technology
APPROVED
DATE Apr 19, 2020

Signed Marlon Paulo (Apr 19, 2020)
Statewide Technology Procurement

Exempt per Governor's
Proclamation of a State
Emergency, effect March 4, 2020
(GC Sections 8625-8629)

EXHIBIT A STATEMENT OF WORK (SOW)

1. OBJECTIVE

The global COVID-19 epidemic has reached the state of California and now presents a serious threat to the health of its residents and its economic prosperity. With the Governor's declaration of a State of Emergency on March 4, 2020, interventions are urgently needed to mitigate its impacts.

Deloitte Consulting LLP (hereinafter referred to as the "Contractor") agrees to provide the Employment Development Department (hereinafter referred to as "EDD" or the "State"), augmenting EDD's Unemployment Insurance (UI) Telephone Claims Center (TCC).

These services are required immediately due to the surge in unemployment claims being filed by individuals that have lost their jobs as a result of the COVID-19 pandemic.

Calls to EDD's UI TCC have increased dramatically as a result of COVID-19 related mass layoffs around State of California and EDD's UI TCC staff cannot keep up with this volume. This inability to handle the call volume is leading to much frustration with the public, compounding the fear and uncertainty they are facing financially.

Contracting with a private Contractor (Contractor) who can provide staff and service augmentation to EDD's UI TCC operation will quickly increase EDD's ability to handle the increase in call volume and will assist in our ability to process claims more expeditiously and assuage much of the public's concerns.

EDD reserves the right to shift priorities within the scope of work at any time upon notice to the Contractor. Therefore, the Contractor must provide a price for each of the project areas described in this emergency procurement.

The new capacity that the augmented Call Center provides will, in conjunction with the existing State of California UI TCC operation, significantly advance the State's goal of enrolling all those individuals that are eligible for unemployment insurance benefits.

The augmented Call Center project will commence when the contract is signed and will have a term of two months with an option to add four (4) 1 month extensions at the same rate for the first two months.

2. TERM/PERIOD OF PERFORMANCE

- a. The period of performance for the Contract shall be two (2) months from April 20, 2020 or upon approval, whichever is later, through June 20, 2020.
- b. The Contractor shall not be authorized to deliver or commence the performance of services as described in this SOW until written approval has been obtained from all entities. Any delivery or performance of service that is commenced prior to the signing of the Contract shall be considered voluntary on the part of the Contractor and non-compensable.

3. CONTRACT REPRESENTATIVES

All notices required by, or relating to, this Contract shall be in writing and shall be sent to the parties of the Contract at the address set below unless changed from time to time, in which event each party shall so notify the other in writing, and all such notices shall be deemed duly given if deposited, postage prepaid, in the United States mail or e-mailed and directed to the addresses then prevailing.

The Technical Contract Managers during the term of this contract will be:

State: Employment Development Department	Contractor: Deloitte Consulting LLP
Name: Karen Sanders	Name: Josh Nisbet
Phone: 916-654-8554	Phone: 916-718-8331
e-mail: Karen.sanders@edd.ca.gov	e-mail: jnisbet@deloitte.com

The Business Contract Manager during the term of this contract will be:

State: Employment Development Department	Contractor: Deloitte Consulting LLP
Unit: UI Systems Support Section Manager	Name: Josh Nisbet
Name: Erica Looney	Address: 980-9 th Street, Suite 1800
Address: 800 Capitol Mall, Sacramento, CA 95814	Sacramento, CA 95814
Phone: 916-653-6074	Phone: 916-718-8331
e-mail: erica.looney@edd.ca.gov	e-mail: jnisbet@deloitte.com

4. PROJECT TASKS/DELIVERABLES

The Contractor, may initially provide a team of 500 full-time equivalent telephone agents which will have access to EDD contact center and corresponding system(s) of record technologies in order to answer, diagnose and resolve or properly transfer if outside of an agreed set of call drivers. EDD will assist in training by providing training materials. Additionally, Contractor will develop and deploy a chatbot with agreed intents as well as outbound communications, social media sensing and CX measurement.

The primary scope for the augmented Call Center operation is to assist EDD's Call Centers operation by providing call center services to include staff who can help respond to an extraordinarily high call volume for UI Original Claim applications and Pandemic Unemployment Assistance (PUA) applications and inquiries. 500 Contractor's agents are to ramp up as quickly as possible to commence work at the start of the contract, and EDD may seek additional agents at a later date. Contractor must use EDD's Verizon VCC solution or another agreed upon solution and provide proper staffing is maintained during call center operational days and hours in accordance with a staffing plan mutually agreed to by the parties. The Contractor's agents will be trained on EDD policies and procedures for in scope UI services and support.

The Contractor must provide call center operations and oversight including project management and reporting on contract activities to EDD.

Other Services that may be required, subject to EDD approval will be executed using the Work Authorization Form (Exhibit A -2).

Command Center Operations & Oversight

Contractor will provide ongoing project management, oversight and reporting to EDD needs. Specifically, these tasks will consist of the following:

- Provide ongoing PMO, support and operations oversight over level 1.0 (Genesys) and level 1.5 (VCC) contact centers
- Measure levels of service and report to the State of California
- Respond to escalation items and emerging needs as Contractor or EDD identify
- Capture existing FAQs and refine based on surge needs
- Contractor will define a daily cadence for reporting, communication, and provide a 360-degree view of call center operations

Contact Center Technology

Contractor will assist with the design, development and integration of contact center technologies to support call flows, routing, automation and workforce management. Specifically, these tasks will include:

- Assist with the integration of cloud instances & provision access and base configurations as required by the surge
- Implement workforce management configurations and measure traffic and call arrivals in order to derive insights and courses of action to be considered by EDD UI leadership.
- Assist with technical provisioning and troubleshooting of agent issues

Agent Deployment

Contractor will deploy an initial tranche of 500 full-time equivalent customer service agents to support the surge in call volumes; number of agents will fluctuate as needed during the period as agreed to by the parties.

Responsibilities will include:

- Answer call types as agreed between the parties
- Provide supervisors for agents
- Provide a quality program for the call types
- Provide workforce management technology and staff for agreed call types

Chatbot Deployment

Contractor will design, develop and implement chatbot automations to increase call response efficiencies and accuracy. The Contractor will provide to the State, at no charge, all

documentations, including but not limited to the developed use cases. Specifically, these tasks will consist of:

- Develop chatbot use cases
- Design, develop, install & configure chatbot MVP
- Optimize and refine chatbot automation (deploy every 10 days)

Outbound Communications, Campaigns, Sensing & CX Measurement

Contractor will design, develop and implement outbound communications and campaigns to support claimants. Contractor will also create sensing and experience measurements to keep a pulse on needs, wants, and issues. Specifically, these tasks will consist of:

- Social media sensing and CX measurement
- Develop and deploy outbound communications
- Develop and deploy outbound campaigns

Staff Qualifications

All references to “Contractor staff”, “Contractor agents”, and “Contractor management” include subcontractors and all subcontractor personnel are subject to the same requirements and standards as Contractor personnel, including but not limited to all confidentiality requirements.

Accessibility and Staffing:

- A. The Contractor will assume a support role to help the current UI hotlines through an augmented Call Center.
- B. The Contractor will be required to hire staff who have strong communication and interpersonal skills.
- C. The Contractor’s agents must be able to assist English and Spanish speaking individuals.
- D. The Contractor’s agents who are taking calls must use EDD’s Verizon VCC solution or such other solution agreed to by the parties and ensure proper staffing is maintained during call center operational days and hours in accordance with the parties staffing plan.
- E. The current hours of operation (PST) for the augmented Call Center operation will be as follows, and staffed in accordance with the agreed to staffing plan:

Monday 8:00 a.m. to 8:00 p.m.
Tuesday 8:00 a.m. to 8:00 p.m.
Wednesday 8:00 a.m. to 8:00 p.m.
Thursday 8:00 a.m. to 8:00 p.m.

Friday 8:00 a.m. to 8:00 p.m.
Saturday 8:00 a.m. to 8:00 p.m.
Sunday 8:00 a.m. to 8:00 p.m.

These hours may be expanded or contracted by the EDD.

- F. The Contractor's augmented Call Center agents need to escalate callers threatening self-harm or that are threatening the agent. Calls will be escalated as determined by EDD and communicated to Deloitte.
- G. The Contractor's agents must transfer more complex calls to EDD utilizing the features and capabilities of the technology provided by EDD.

Objectives:

Weekly, Deloitte and EDD will meet to discuss the staffing levels required to address the call volumes.

Caller Assistance/Information Dissemination:

The Contractor's information dissemination responsibilities include, but are not limited to, providing UI benefits information to callers.

Handling Complaints:

- A. Accept information on complaints about the programs and provide written information on complaints to EDD for follow up as determined by EDD and communicated to Deloitte.
- B. Respond to complaints either directly or by capturing the information and referring it to EDD staff. Once EDD has investigated the complaint and determined the outcome, EDD will inform the person who made the complaint. The Contractor will use EDD's technology to log such complaints.

Access to EDD Resources:

The Contractor will have access to the EDD UI system and other technology available to EDD UI staff, as may be authorized by EDD.

Assumptions:

1. A staffed hour ("Staffed Hour") represents time spent talking with clients, after call work, QA, supervisor time, workforce management, technology integration, time spent logged into the phone system to handle customer calls, and all other functions that call center personnel will perform hereunder. Staffed Hours will include required breaks, training and briefing activities and is the time entered by agents in their company's internal time tracking system.

2. EDD approves the Contractor's use of the following subcontractors to perform work under this SOW: Verizon, Senture, Harte Hanks, and AnswerNet
3. The provisions required for FEMA funded contracting attached hereto as Exhibit [X], entitled "Additional Legal Terms Required for FEMA Reimbursement" are incorporated herein to the extent applicable.
4. For this Agreement, the warranty period under Section 18(a) of GSDP401IT shall be thirty (30) days from delivery rather than one year.

5. CONTRACTOR RESPONSIBILITIES

- a. The Contractor will provide its own equipment necessary to perform the required duties.
- b. The Contractor shall designate a primary contact person to whom all project communications may be addressed and who has the authority to act on all aspects of the services.
- c. The Contractor will adhere to the EDD policies and procedures, guidelines and templates including access and security requirements.

6. EMPLOYMENT DEVELOPMENT DEPARTMENT RESPONSIBILITIES

- a. Designate a person to whom all Contractor communication may be addressed, and who has the authority to act on all aspects of the services. This person will review the SOW and associated documents with the Contractor to ensure understanding of the responsibilities of both parties.
- b. Provide a timely review and approval of information and documentation provided by the Contractor to perform its obligations.

7. PERFORMANCE

The EDD will be the sole judge of the acceptability of all work performed and all work products produced by the Contractor as a result of this SOW. Should the work performed or the products produced by the Contractor fail to meet the EDD conditions, requirements, specifications, guidelines, or other applicable standards, the following resolution process will be employed, except as superseded by other binding processes (this section 7 shall only apply to the extent that Deliverables are provided by Contractor as part of the Services):

- a. The EDD will notify the Contractor after completion of each phase of service of any acceptance problems by identifying the specific inadequacies and/or failures in the services performed and/or the products produced by the Contractor. The costs related to rework of unacceptable work products shall not be billed to the EDD.
- b. The Contractor will respond to the EDD by submitting a detailed explanation describing precisely how the identified services and/or products actually adhere to and satisfy all applicable requirements, and/or a proposed corrective action plan to address the specific inadequacies and/or failures in the identified services and/or products. Failure by the Contractor to respond to the EDD's initial problem notification within the required time limits may result in immediate termination of the Contract.

In the event of such termination, the EDD shall pay all amounts due the Contractor for all work accepted prior to termination.

- c. The EDD will notify the Contractor in writing whether it accepts or rejects the explanation and/or plan. If the EDD rejects the explanation and/or plan, the Contractor will submit a revised corrective action plan within three (3) State business days of notification of rejection. Failure by the Contractor to respond to the EDD's notification of rejection by submitting a revised corrective action plan within the required time limits may result in immediate termination of the Contract. In the event of such termination, the EDD shall pay all amounts due the Contractor for all work accepted prior to termination.
- d. The EDD will notify the Contractor in writing whether it accepts or rejects the revised corrective action plan proposed by the Contractor. Rejection of the revised corrective action plan will result in immediate termination of the Contract. In the event of such termination, the EDD shall pay all amounts due the Contractor for all work accepted prior to termination.

8. PROBLEM ESCALATION

The parties acknowledge and agree that certain technical and project related problems or issues may arise, and that such matters shall be brought to the EDD's attention. Problems or issues shall normally be reported in regular status reports. There may be instances, however, where the severity of the problems justifies escalated reporting. To this extent, the Contractor will determine the level of severity and notify the appropriate EDD personnel. The EDD personnel notified, and the time period taken to report the problem or issue, shall be at a level commensurate with the severity of the problem or issue. The EDD personnel include, but are not limited to, the following:

First level:

Michelle Sutton-Riggs - Unemployment Insurance Deputy Director

Second level:

Rita Gass - Information Technology Deputy Director

Third level:

Sharon Hilliard - Director

9. AMENDMENTS

Consistent with the terms and conditions of the original agreement, and upon mutual consent, the EDD and the Contractor may execute amendments to this Agreement, including revisions to Exhibit A – Statement of Work (i.e. objective, project tasks and deliverables). There shall be options to amend for additional time and funds. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, and agreed upon by both parties and approved, as required. No verbal understanding or agreement not incorporated into the Agreement is binding on any of the parties.

10. CANCELLATION

The EDD may exercise its option to terminate the Contract at any time with 30 calendar days' prior written notice. In the event of such termination, the EDD shall pay all amounts due the Contractor for all tasks/deliverables accepted prior to termination

11. OTHER CONTRACT CONSIDERATIONS

- a. The Contractor will act as prime contractor under this Contract. In addition to identifying all personnel proposed to work under this Contract, the Contractor shall also identify its subcontractor affiliation, as applicable.
- b. The EDD reserves the right to approve all subcontractors prior to the performance of any work by the subcontractor.
- c. Nothing contained in this Contract shall create any conceptual relationship between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor is fully responsible to the EDD for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them.
- d. If a subcontractor is a California Certified Small Business (SB) and/or Disabled Veteran Business Enterprise (DVBE), then those amounts paid to certified subcontractors shall be identified on the Contractor's invoice(s).
- e. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- f. Military and Veteran Code (MVC) 999.5(d), Government Code (GC) 14841, and California Code of Regulations (CCR) 1896.78(e) requires all Prime Contractor's that had a DVBE firm perform any element of work for a contract to report DVBE information.

Prime Contractors are required to maintain records supporting the information that all payments to DVBE subcontractor(s) were made. The Prime DVBE Subcontracting form can be found at the following link: https://www.documents.dgs.ca.gov/dgs/fmc/gsp/pd/pd_810P.pdf and the instructions can be found at the following link: <https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/File-a-DVBE-Subcontractor-Report#@ViewBag.JumpTo>. Completed forms are to be e-mailed to: primeDVBE@state.ca.gov.

12. FEDERAL TAX ADMINISTRATION REQUIREMENTS

Subject to the Internal Revenue Service (IRS), federal tax information (FTI) requirements, if an unfavorable response is received by the IRS, this contract will be terminated immediately, per General Provisions – Information Technology (GSPD-401), clause 23, Termination for Default.

13. SECURITY AND DATA PROTECTION REQUIREMENTS

The EDD must ensure agreements with state and non-state entities include provisions, which protect and minimize risk to the state when engaging in the development, use, or maintenance of information systems, products, solutions, or services. In order to comply with the State Administrative Manual (SAM) Section 5305.8, Contractor must comply with Exhibit E, Security and Data Protection.

**EXHIBIT A-1
ACCEPTANCE DOCUMENT**

CONTRACTOR NAME: _____

EMPLOYMENT DEVELOPMENT DEPARTMENT CONTRACT NUMBER: _____

ACCEPTANCE DOCUMENT (AD) NUMBER: _____

TITLE: _____

COMPLETION DATE: _____

TOTAL COST: \$_____

DESCRIPTION:

EMPLOYMENT DEVELOPMENT DEPARTMENT ACCEPTANCE OR REJECTION:

AUTHORIZED AND APPROVED:

CONTRACTOR OFFICIAL SIGNATURE / DATE
DEPARTMENT

EMPLOYMENT DEVELOPMENT

CONTRACT ADMINISTRATOR SIGNATURE /
DATE

Note: Once the Contractor and the Employment Development Department have approved the AD as stipulated in the contract, the Contractor may submit an invoice to the Employment Development Department. Refer to payment terms in Exhibit B.

EXHIBIT A-2
WORK AUTHORIZATION FORM

The task/deliverable(s) will be performed in accordance with this Work Authorization and the provision of Contract Number:

WORK AUTHORIZATION NUMBER	PAGE(S) of
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TITLE OF TASK/DELIVERABLE

TASK/DELIVERABLE SUMMARY *(Brief description of task/deliverable to be performed under work authorization)*

START DATE	COMPLETION DATE
TOTAL ESTIMATED LABOR HOURS	TOTAL ESTIMATED COST

APPROVALS

CONTRACTOR CONTRACT ADMINISTRATOR NAME	TITLE
SIGNATURE	DATE
EMPLOYMENT DEVELOPMENT DEPARTMENT CONTRACT ADMINISTRATOR NAME	TITLE
SIGNATURE	DATE

WORK AUTHORIZATIONS (WA)

- a. Each WA shall consist of a detailed statement of the purpose, objective, or goals to be undertaken by the Contractor and all information requested to be provided per WA form, Exhibit A-2.
- b. All WA must be in writing prior to beginning work and signed by the Contractor and the EDD Technical Contract Manager.
- c. The EDD has the right to require the Contractor to stop or suspend work on any WA.
- d. Personnel resources will not be expended (at a cost to the EDD) on task/deliverable accomplishment in excess of estimated work hours required unless the procedure below is followed:
 - (1) If, in performance of the work, the Contractor determines that a WA to be performed under this Contract cannot be accomplished within the estimated work hours, the Contractor will immediately notify the EDD in writing of the Contractor's estimate of the work hours which will be required to complete the WA in full. Upon receipt of such notification, the EDD may:
 - (a) Authorize the Contractor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the WA;
 - (b) Terminate the WA; or
 - (c) Alter the scope of the WA in order to define tasks that can be accomplished within the remaining estimated work hours.
 - (2) The EDD will notify the Contractor in writing of its decision within seven (7) calendar days after receipt of the notification. If notice of the decision is given to proceed via an amended WA signed by the Contractor and EDD, the Contractor may expend the estimated additional work hours for agreed upon services. The EDD agrees to reimburse the Contractor for such additional work hours.

**EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS**

1. Payment for services performed under this Contract shall be monthly in arrears for services satisfactorily rendered and upon receipt and approval of the invoice. An Acceptance Document, Exhibit A-1 is required from the EDD Technical Contract Manager before processing an invoice for payment.
2. Upon successful completion and acceptance of each project task/deliverable identified in a Contract, the Contractor will submit an invoice for payment associated with the individual payment amounts. Payment shall be based on the cost worksheet and acceptance by the EDD.
3. Invoices shall be submitted, and shall identify labor and costs charged. Invoices shall be submitted monthly, in arrears, however, invoices shall be due and payable, and payment shall be made, only after the EDD acceptance under this Contract.
4. The Contractor costs related to items such as travel and per diem are costs of the Contractor, shall be inclusive of the monthly rate, and **will not be paid separately** as part of this Contract.
5. Submit your invoice using ONE of the following options referencing the Contract Number or Agency Order Number:
 - a. Send via U.S. Mail in **TRIPLICATE** to:
Employment Development Department (EDD)
Erica Looney
UI Systems Support Section Manager
UI Support Division
800 Capitol Mall, MIC 1
UI Branch - UIPCD #379
Sacramento, CA 95814
916-653-6074 Desk
 - OR**
 - b. Send electronically to: erica.looney@edd.ca.gov
6. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Contract does not appropriate sufficient funds for the program, this Contract shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Contract and Contractor shall not be obligated to perform any provisions of this Contract.
7. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Contract with no liability occurring to the State, or offer a contract amendment to the Contractor to reflect the reduced amount.
8. Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927. Payment to small/micro businesses shall be made in accordance with and within the time specified in Chapter 4.5, Government Code 927 et seq.

EXHIBIT B-1 COST WORKSHEET

The Contractor shall provide all labor, materials, and equipment necessary to provide the services for **Coronavirus Disease COVID-19 Emergency Response Solution** in a time and material basis for hours worked in accordance with the specifications described in the SOW, Exhibit A, at the rates schedule specified below. **Payment for services performed under this contract shall be monthly.** Submission of this information is required.

Cost sheet for Initial Two Months

Work stream	Total Estimated Cost
Command Center Operations & Oversight	\$ 1,122,185.00
Agent Deployment	\$ 8,800,000.00
Chatbot Deployment	\$ 617,400.00
Outbound Communications, Campaigns, Sensing & CX Measurement	\$ 595,080.00
Total estimated cost for first two months	\$ 11,134,665.00

The State and Contractor reserves the right to shift hours between labor categories, provided the total resulting invoiced amount does not exceed authorized funding.

Work stream	Hourly Rate	Estimated Hours	Total Cost
Engagement Partner	\$ 362.50	480	\$ 174,000.00
Project Manager	\$ 315.00	2,680	\$ 844,200.00
Senior Analyst	\$ 257.00	2,520	\$ 647,640.00
Analyst	\$ 155.00	4,315	\$ 668,825.00
Agents	\$ 55.00	160,000	\$ 8,800,000.00
Total estimated cost for first two months			\$ 11,134,665.00

Qualifications for above Category Descriptions:

Engagement Partner:

Those in the Engagement Partner category will serve as the engagement managers or senior subject matter expert. Individuals named to this category must have significant direct experience in providing related services, including but not limited to those services specifically outlined in this SOW. They must be available to meet with DOL leadership virtually.

Project Manager:

Project Managers will be responsible for developing project work plans and schedules for deliverables, coordinating, delegating, and managing the assignments for consultant staff, and serving as the point of contact for issues, project status, meetings, and deliverables. The Project Managers will also be responsible for updating the Engagement Partner/s on the status of a project and any issues that may arise. Project Managers must have at least seven years of experience in related work. They must also be available to meet with DOL leadership virtually.

Senior Analyst:

The Senior Analysts, working under the Project Managers, will be responsible for the analysis and resolution of program issues on which the project seeks advice or guidance. These issues include, but are not limited to those outlined in the SOW. The Senior Analyst should have at least four years' experience in related work.

Analyst:

The Analyst, working under the Project Manager and with the Senior Analyst, will serve in a capacity similar to that of the Senior Analyst. The Analyst must have at least two years' experience in strategy related work.

Agents:

Call center agents will be professional call center staff that have the training and experience to meet the requirements of the SOW. Agents will be billed based on "Staffed Hours".

EXHIBIT D
CALIFORNIA DEPARTMENT OF TECHNOLOGY
SPECIAL TERMS AND CONDITIONS TO SAFEGUARD FEDERAL TAX
INFORMATION

Federal statute, regulations and guidelines require that all contracts for services relating to the processing, storage, transmission, or reproduction of federal tax returns or return information, the programming, maintenance, repair, or testing of equipment or other property, or the providing of other services, for tax administration purposes include the provisions contained in this exhibit. (See 26 U.S.C. §6103(n); 26 C.F.R. §301.6103(n)-1(a)(2) and (d); Internal Revenue Service (IRS) Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies (Rev. 9-2016), Section 5.5 and Exhibit 7.)

The contractor agrees to comply with 26 U.S.C. §6103(n); 26 C.F.R. §301.6103(n)-1; IRS Publication 1075 (Rev. 9-2016); and all applicable conditions and restrictions as may be prescribed by the IRS by regulation, published rules or procedures, or written communication to the contractor. (See 26 C.F.R. §301.6103(n)-1(d); IRS Publication 1075 (Rev. 9-2016))

I. PERFORMANCE

In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the contractor or the contractor's employees.
- (2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
- (3) All returns and return information will be accounted for upon receipt and properly

stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

- (4) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (6) All computer systems receiving, processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
- (7) No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (8) The contractor will maintain a list of employees authorized access. Such list will

be provided to the agency and, upon request, to the IRS reviewing office.

- (9) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.

Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result

in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

- (3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, *IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information* and Exhibit 5, *IRC Sec. 7213 Unauthorized Disclosure of Information*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section

10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.¹

III. INSPECTION

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

REFERENCES

26 U.S.C. §6103(n)

Pursuant to regulations prescribed by the Secretary, returns and return information may be disclosed to any person, including any person described in section 7513 (a), to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information, the programming, maintenance, repair, testing, and procurement of equipment, and the providing of other services, for purposes of tax administration.

26 C.F.R. §301.6103(n)-1 Disclosure of returns and return information in connection with procurement of property and services for tax administration purposes.

(a) *General rule.* Pursuant to the provisions of section 6103(n) of the Internal Revenue Code and subject to the requirements of paragraphs (b), (c), and (d) of this section, officers or employees of the Treasury Department, a State tax agency, the Social Security Administration, or the Department of Justice, are authorized to disclose returns and return information (as defined in section 6103(b)) to any person (including, in the case of the Treasury Department, any person described in section 7513(a)), or to an officer or employee of such person, to the extent

necessary in connection with contractual procurement of—

- (1) Equipment or other property, or
- (2) Services relating to the processing, storage, transmission, or reproduction of such returns or return information, the programming, maintenance, repair, or testing of equipment or other property, or the providing of other services, for purposes of tax administration (as defined in section 6103(b)(4)).

No person, or officer or employee of such person, to whom a return or return information is disclosed by an officer or employee of the Treasury Department, the State tax agency, the Social Security Administration, or the Department of Justice, under the authority of this paragraph shall in turn disclose such return or return information for any purpose other than as described in this paragraph, and no such further disclosure for any such described purpose shall be made by such person, officer, or employee to anyone, other than another officer or employee of such person whose duties or responsibilities require such disclosure for a purpose described in this paragraph, without written approval by the Internal Revenue Service.

- (b) *Limitations.* For purposes of paragraph (a) of this section, disclosure of returns or return information in connection with contractual procurement of property or services described in such paragraph will be treated as necessary only if such procurement or the performance of such services cannot otherwise be reasonably, properly, or economically carried out or performed without such disclosure.

Thus, for example, disclosures of returns or return information to employees of a contractor for purposes of programming, maintaining, repairing, or testing computer equipment used by the Internal Revenue Service or a State tax agency should be made only if such services cannot be reasonably, properly, or economically performed by use of information or other data in a form which does not identify a particular taxpayer. If, however, disclosure of returns or return

¹ A 30 minute disclosure awareness training video produced by the IRS can be found at

<http://www.irsvideos.gov/Governments/Safeguards/DisclosureAwarenessTrainingPub4711>

information is in fact necessary in order for such employees to reasonably, properly, or economically perform the computer related services, such disclosures should be restricted to returns or return information selected or appearing at random. Further, for purposes of paragraph (a), disclosure of returns or return information in connection with the contractual procurement of property or services described in such paragraph should be made only to the extent necessary to reasonably, properly, or economically conduct such procurement activity. Thus, for example, if an activity described in paragraph (a) can be reasonably, properly, and economically conducted by disclosure of only parts or portions of a return or if deletion of taxpayer identity information (as defined in section 6103(b)(6) of the Code) reflected on a return would not seriously impair the ability of the contractor or his officers or employees to conduct the activity, then only such parts or portions of the return, or only the return with taxpayer identity information deleted, should be disclosed.

(c) *Notification requirements.* Persons to whom returns or return information is or may be disclosed as authorized by paragraph (a) of this section shall provide written notice to their officers or employees—

- (1) That returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized by paragraph (a) of this section;
- (2) That further inspection of any returns or return information for a purpose or to an extent unauthorized by paragraph (a) of this section constitutes a misdemeanor, punishable upon conviction by a fine of as much as \$1,000, or imprisonment for as long as 1 year, or both, together with costs of prosecution;
- (3) That further disclosure of any returns or return information for a purpose or to an extent unauthorized by paragraph (a) of this section constitutes a felony, punishable upon conviction by a fine of as much as \$5,000, or imprisonment for as long as 5 years, or both, together with the costs of prosecution;
- (4) That any such unauthorized further inspection or disclosure of returns or

return information may also result in an award of civil damages against any person who is not an officer or employee of the United States in an amount not less than \$1,000 for each act of unauthorized inspection or disclosure or the sum of actual damages sustained by the plaintiff as a result of such unauthorized disclosure or inspection as well as an award of costs and reasonable attorneys fees; and

(5) If such person is an officer or employee of the United States, a conviction for an offense referenced in paragraph (c)(2) or (c)(3) of this section shall result in dismissal from office or discharge from employment.

(d) *Safeguards.* Any person to whom a return or return information is disclosed as authorized by paragraph (a) of this section shall comply with all applicable conditions and requirements which may be prescribed by the Internal Revenue Service for the purposes of protecting the confidentiality of returns and return information and preventing disclosures of returns or return information in a manner unauthorized by paragraph (a). The terms of any contract between the Treasury Department, a State tax agency, the Social Security Administration, or the Department of Justice, and a person pursuant to which a return or return information is or may be disclosed for a purpose described in paragraph (a) shall provide, or shall be amended to provide, that such person, and officers and employees of the person, shall comply with all such applicable conditions and restrictions as may be prescribed by the Service by regulation, published rules or procedures, or written communication to such person. If the Service determines that any person, or an officer or employee of any such person, to whom returns or return information has been disclosed as provided in paragraph (a) has failed to, or does not, satisfy such prescribed conditions or requirements, the Service may take such actions as are deemed necessary to ensure that such conditions or requirements are or will be satisfied, including—

- (1) Suspension or termination of any duty or obligation arising under a contract with

the Treasury Department referred to in this paragraph or suspension of disclosures by the Treasury Department otherwise authorized by paragraph (a) of this section, or

- (2) Suspension of further disclosures of returns or return information by the Service to the State tax agency, or to the Department of Justice, until the Service determines that such conditions and requirements have been or will be satisfied.

(e) *Definitions.* For purposes of this section—

- (1) The term *Treasury Department* includes the Internal Revenue Service and the Office of the Chief Counsel for the Internal Revenue Service;
- (2) The term *State tax agency* means an agency, body, or commission described in section 6103(d) of the Code; and
- (3) The term *Department of Justice* includes offices of the United States Attorneys.

IRS Publication 1075 (Rev. 9-2016) Section 5.5 Control over Processing

Processing of FTI, in an electronic media format, including removable media, microfilms, photo impressions, or other formats (including tape reformatting or reproduction or conversion to punch cards, digital images or hard copy printout) will be performed pursuant to one of the following procedures:

5.5.1 Agency Owned and Operated Facility

Processing under this method will take place in a manner that will protect the confidentiality of the information on the electronic media. All safeguards outlined in this publication also must be followed and will be subject to IRS safeguard reviews.

5.5.2 Contractor or Agency Shared Facility – Consolidated Data Centers

Recipients of FTI are allowed to use a shared facility but only in a manner that does not allow access to FTI by employees, agents,

representatives or contractors of other agencies using the shared facility.

Note: For purposes of applying sections 6103(l), (m) and (n), the term “agent” includes contractors. Access restrictions pursuant to the IRC authority by which the FTI is received continue to apply. For example, since human services agencies administering benefit eligibility programs may not allow contractor access to any FTI received, their data within the consolidated data center may not be accessed by any contractor of the data center.

The requirements in Exhibit 7, Contract Language for General Services, must be included in the contract in accordance with IRC Section 6103(n).

The contractor or agency-shared computer facility is also subject to IRS safeguard reviews.

Note: The above rules also apply to releasing electronic media to a private contractor or other agency office even if the purpose is merely to erase the old media for reuse.

Agencies utilizing consolidated data centers must implement appropriate controls to ensure the protection of FTI, including a service level agreement (SLA) between the agency authorized to receive FTI and the consolidated data center. The SLA should cover the following:

1. The consolidated data center is considered to be a “contractor” of the agency receiving FTI. The agency receiving FTI – whether it is a state revenue, workforce, child support enforcement or human services agency – is responsible for ensuring the protection of all FTI received. However, as the “contractor” for the agency receiving FTI, the consolidated data center shares responsibility for safeguarding FTI as well.
2. Provide written notification to the consolidated data center management that they are bound by

- the provisions of Publication 1075, relative to protecting all federal tax information within their possession or control. The SLA should also include details concerning the consolidated data center's responsibilities during a safeguard review and support required to resolve identified findings.
3. The agency will conduct an internal inspection of the consolidated data center every eighteen months (see section 6.3). Multiple agencies sharing a consolidated data center may partner together to conduct a single, comprehensive internal inspection. However, care should be taken to ensure agency representatives do not gain unauthorized access to other agency's FTI during the internal inspection.
 4. The employees from the consolidated data center with access to FTI, including system administrators and programmers, must receive disclosure awareness training prior to access to FTI and annually thereafter and sign a confidentiality statement. This provision also extends to any contractors hired by the consolidated data center that has access to FTI.
 5. The specific data breach incident reporting procedures for all consolidated data center employees and contractors. The required disclosure awareness training must include a review of these procedures.
 6. The Exhibit 7 language must be included in the contract between the recipient agency and the consolidated data center, including all contracts involving contractors hired by the consolidated data center.
 7. Identify responsibilities for coordination of the 45-day notification of the use of contractors

or sub-contractors with access to FTI.

Note: Generally, consolidated data centers are either operated by a separate state agency (example: Department of Information Services) or by a private contractor. If an agency is considering transitioning to either a state owned or private vendor consolidated data center, the Office of Safeguards strongly suggests the agency submit a request for discussions with Safeguards as early as possible in the decision-making or implementation planning process. The purpose of these discussions is to ensure the agency remains in compliance with safeguarding requirements during the transition to the consolidated data center.

26 U.S.C. §7213. Unauthorized disclosure of information

(a) Returns and return information

(1) Federal employees and other persons

It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

(2) State and other employees

It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i) or (7)(A)(ii),

(l)(6), (7), (8), (9), (10), (12), (15), (16), (19), or (20) or (m)(2), (4), (5), (6), or (7) of section 6103.

Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(3) Other persons

It shall be unlawful for any person to whom any return or return information (as defined in section 6103(b)) is disclosed in a manner unauthorized by this title thereafter willfully to print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(4) Solicitation

It shall be unlawful for any person willfully to offer any item of material value in exchange for any return or return information (as defined in section 6103(b)) and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(5) Shareholders

It shall be unlawful for any person to whom a return or return information (as defined in section 6103(b)) is disclosed pursuant to the provisions of section 6103(e)(1)(D)(iii) willfully to disclose such return or return information in any manner not provided by law. Any violation of this paragraph shall be a felony punishable by a fine in any amount not to exceed \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(b) Disclosure of operations of manufacturer or producer

Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and the offender shall be dismissed from office or discharged from employment.

(c) Disclosures by certain delegates of Secretary

All provisions of law relating to the disclosure of information, and all provisions of law relating to penalties for unauthorized disclosure of information, which are applicable in respect of any function under this title when performed by an officer or employee of the Treasury Department are likewise applicable in respect of such function when performed by any person who is a "delegate" within the meaning of section 7701(a)(12)(B).

(d) Disclosure of software

Any person who willfully divulges or makes known software (as defined in section 7612(d)(1)) to any person in violation of section 7612 shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

(e) Cross references

(1) Penalties for disclosure of information by preparers of returns

For penalty for disclosure or use of information by preparers of returns, see section 7216.

(2) Penalties for disclosure of confidential information

For penalties for disclosure of confidential information by any officer or employee of the United States or any department or agency thereof, see 18 U.S.C. 1905.

26 U.S.C. §7213A. Unauthorized inspection of returns or return information

(a) Prohibitions

(1) Federal employees and other persons
It shall be unlawful for—

(A) any officer or employee of the United States,
or

(B) any person described in subsection (l)(18) or
(n) of section 6103 or an officer or employee of
any such person,
willfully to inspect, except as authorized in this
title, any return or return information.

(2) State and other employees

It shall be unlawful for any person (not described
in paragraph (1)) willfully to inspect, except as
authorized in this title, any return or return
information acquired by such person or another
person under a provision of section 6103
referred to in section 7213 (a)(2) or under
section 6104 (c).

(b) Penalty

(1) In general

Any violation of subsection (a) shall be
punishable upon conviction by a fine in any
amount not exceeding \$1,000, or imprisonment
of not more than 1 year, or both, together with
the costs of prosecution.

(2) Federal officers or employees

An officer or employee of the United States who
is convicted of any violation of subsection (a)
shall, in addition to any other punishment, be
dismissed from office or discharged from
employment.

(c) Definitions

For purposes of this section, the terms “inspect”,
“return”, and “return information” have the
respective meanings given such terms by
section 6103 (b).

26 U.S.C. §7431. Civil damages for unauthorized inspection or disclosure of returns and return information

(a) In general

(1) Inspection or disclosure by employee of United States

If any officer or employee of the United
States knowingly, or by reason of
negligence, inspects or discloses any
return or return information with
respect to a taxpayer in violation of
any provision of section 6103, such
taxpayer may bring a civil action for
damages against the United States in
a district court of the United States.

(2) Inspection or disclosure by a person who is not an employee of United States

If any person who is not an officer or
employee of the United States
knowingly, or by reason of negligence,
inspects or discloses any return or
return information with respect to a
taxpayer in violation of any provision
of section 6103, such taxpayer may
bring a civil action for damages
against such person in a district court
of the United States.

(b) Exceptions

No liability shall arise under this section with
respect to any inspection or disclosure -

(1) which results from a good faith, but
erroneous, interpretation of section 6103,
or

(2) which is requested by the taxpayer.

(c) Damages

In any action brought under subsection (a),
upon a finding of liability on the part of the
defendant, the defendant shall be liable to
the plaintiff in an amount equal to the sum
of -

(1) the greater of -

(A) \$1,000 for each act of
unauthorized inspection or
disclosure of a return or return
information with respect to which
such defendant is found liable, or

(B) the sum of -

(i) the actual damages
sustained by the plaintiff as a
result of such unauthorized
inspection or disclosure, plus

(ii) in the case of a willful
inspection or disclosure or an

inspection or disclosure which is the result of gross negligence, punitive damages, plus

(2) the costs of the action, plus

(3) in the case of a plaintiff which is described in section [7430\(c\)\(4\)\(A\)\(ii\)](#), reasonable attorneys fees, except that if the defendant is the United States, reasonable attorneys fees may be awarded only if the plaintiff is the prevailing party (as determined under section [7430\(c\)\(4\)](#)).

(d) Period for bringing action

Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized inspection or disclosure.

(e) Notification of unlawful inspection and disclosure

If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of -

(1) paragraph (1) or (2) of section [7213\(a\)](#),

(2) section [7213A\(a\)](#), or

(3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code, the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.

(f) Definitions

For purposes of this section, the terms "inspect", "inspection", "return", and "return information" have the respective meanings given such terms by section [6103\(b\)](#).

(g) Extension to information obtained under section [3406](#)

For purposes of this section -

(1) any information obtained under section [3406](#) (including information with respect to any payee certification failure under subsection (d) thereof) shall be treated as return information, and

(2) any inspection or use of such information other than for purposes of meeting any requirement under section [3406](#) or (subject to the safeguards set forth in section [6103](#)) for purposes permitted under section [6103](#) shall be treated as a violation of section [6103](#). For purposes of subsection (b), the reference to section [6103](#) shall be treated as including a reference to section [3406](#).

(h) Special rule for information obtained under section [6103\(k\)\(9\)](#)

For purposes of this section, any reference to section [6103](#) shall be treated as including a reference to section 6311(e).

EXHIBIT E SECURITY AND DATA PROTECTION

Contractor shall certify to The National Institute of Standards and Technology (NIST) 800-171 standard and the DGS Cloud Computing Services Special Provisions publication requirements. At a minimum, provision shall cover the following:

1. The Contractor assumes responsibility of the confidentiality, integrity and availability of the data under its control. The Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards at all times during the term of the Agreement to secure such data from data breach or loss, protect the data and information assets from breaches, introduction of viruses, disabling of devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its data or affects the integrity of that data.
2. Confidential, sensitive or personal information shall be encrypted in accordance with SAM 5350.1 and SIMM 5305-A.
3. The Contractor shall comply with statewide policies and laws regarding the use and protection of information assets and data. Unauthorized use of data by Contractor or third parties is prohibited.
4. Signed Security and Confidentiality Statement for all personnel assigned during the term of the Agreement. One such Statement may be signed by Contractor on behalf of Contractor and Contractor shall be responsible for compliance by all its personnel and subcontractors.
5. Apply security patches and upgrades, and keep virus protection software up-to-date on all information asset on which data may be stored, processed, or transmitted.
6. The Contractor shall notify the State data owner immediately if a security incident involving the information asset occurs.
7. The State data owner shall have the right to participate in the investigation of a security incident involving its data or conduct its own independent investigation. The Contractor shall allow the State reasonable access to security logs, latency statistics, and other related security data that affects this Agreement and the State's data, at no cost to the State.
8. The Contractor shall be responsible for all costs incurred by the State due to security incident resulting from the Contractor's failure to perform or negligent acts of its personnel, and resulting in an unauthorized disclosure, release, access, review, destruction; loss, theft or misuse of an information asset. If the contractor experiences a loss or breach of data, the contractor shall immediately report the loss or breach to the State. If the State data owner determines that notice to the individuals whose data has been lost or breached is appropriate, the contractor will bear any and all costs associated with the notice or any mitigation selected by the data owner. These costs include, but are not limited to, staff time, material costs, postage, media announcements, and other identifiable costs associated with the breach or loss of data.
9. The Contractor shall immediately notify and work cooperatively with the State data owner to respond timely and correctly to public records act requests.
10. The Contractor will dispose of records of State data as instructed by the State during the term of this agreement. No data shall be copied, modified, destroyed or deleted by the Contractor other than for normal operation or maintenance during the Agreement period without prior written notice to and written approval by the State.
11. Remote access to data from outside the territorial United States, including remote access to data by authorized support staff in identified support centers, is prohibited unless approved in advance by the State.
12. The physical location of Contractor's data center where the Data is stored shall be within the territorial United States.

EXHIBIT F

ADDITIONAL LEGAL TERMS REQUIRED FOR FEMA REIMBURSEMENT

A. Early Termination

Contract may be terminated pursuant to Termination for Convenience and Termination for Cause language in GSPD401IT in Sections 22 and 23 thereof, incorporated by reference into the contract.

B. Remedies

In the event of a breach by the Contractor of any term or provision of this Agreement, the state shall have the right to pursue all remedies set forth in the GSPD401IT.

C. Compliance with the Contract Work Hours and Safety Standards Act (where applicable)

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph C.1 of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph C.1 of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph C.1 of this section.

3. Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-

assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph C.2 of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph C.1 through C.4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs C.1 through C.4 of this section.

D. Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.

2. The Contractor agrees to report each violation to the state and understands and agrees that the state will, in turn, report each violation as required to assure notification to the California Governor's Office of Emergency Services, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

E. Federal Water Pollution Control Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sections 1251 et seq.

2. The Contractor agrees to report each violation to the state and understands and agrees that the state will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

F. Debarment and Suspension Clause

1. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined

at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

2. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3. This certification is a material representation of fact relied upon by the state. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the state, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

G. Byrd Anti- Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

1. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the state.

APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or

employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

CONTRACTOR

By _____
Date _____

H. Procurement of Recovered Materials

1. In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

2. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

I. Access to Records

1. The following access to records requirements apply to this Agreement:
 - i. The Contractor agrees to provide the state, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
 - ii. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - iii. The Contractor agrees to provide the FEMA Administrator or his or her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
 - iv. In compliance with the Disaster Recovery Act of 2018, the state and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

J. Department of Homeland Security Seal, Logo, Flags

1. The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

K. Compliance with Federal Law, Regulations, and Executive Orders

1. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

L. No Obligation by Federal Government

1. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

M. Program Fraud and False or Fraudulent Statements or Related Acts

1. The Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.